

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION**

MICHAEL McDONALD, et. al.,

Plaintiffs,

vs.

MOUNTAIN WEST STEEL, LLC,

Defendant.

**CV-17-54-BU-BMM**

**ORDER**

Plaintiffs filed their Motion for Partial Summary Judgment (“Motion”) on September 17, 2018. (Doc. 22.) The Court was notified on the same day that Defense counsel Michael Horton had been suspended from the federal bar in July of 2018. Consequently, Defendant did not file a response to Plaintiffs’ Motion.

The Court held a telephonic status conference with Plaintiffs’ counsel on November 20, 2018. (Doc. 27.) The Court notified Plaintiffs’ counsel that the Court would vacate the remaining deadlines set forth in the Scheduling Order. The Court further ordered Plaintiffs to serve Defendant’s registered agent with the Motion for Partial Summary Judgment and supporting documents. The Court asked Plaintiffs to file a status report after having allowed Defendant reasonable time to respond to the motion. Plaintiffs served their Motion and supporting documents on

Defendant's registered agent on December 6, 2018. Defendant failed to file a response to Plaintiffs' Motion.

The Court granted Plaintiffs' Motion for Partial Summary Judgment on January 8, 2019. (Doc. 30.) Final Judgment was entered on the same day. (Doc. 31.)

Plaintiffs filed a Motion to Amend/Correct the Final Judgment pursuant to Fed.R.Civ.P. 60(b), or in the alternative 59(e), on February 4, 2019. (Doc. 32.) Rule 60(b) permits a district court to correct an oversight or omission in the judgment. Rule 59(e) allows a party to file a motion to alter or amend within 28 days after entry of the judgment. Plaintiffs assert that the Judgment should be either amended, or clarified to reflect: (1) the dollar amounts now currently owed by the Defendant, (2) the appropriate pre-judgment and post-judgment interest on said amounts, and (3) further clarification that judgment requires Defendant to produce its payroll books and records for a further follow-up audit to determine if any additional sums may be due and owing. (Doc. 33 at 4.) Plaintiffs further request that Michael McDonald be removed as a named Plaintiff in the Caption for this proceeding. *Id.*

**ACCORDINGLY, IT IS ORDERED** that the Final Judgment (Doc. 31) shall be clarified to provide the following:

Judgment is entered against Defendant and in favor of Plaintiffs for:

- (1) \$ 133,164.02, in unpaid contributions and working dues, plus interest through January 8, 2019; and
- (2) Interest accruing after January 8, 2019, which accrues at a rate of \$23.39 per day.

**IT IS FURTHER ORDERED** that Defendant shall submit to an audit and accounting of Defendant's payroll records as to all employees of the Defendant covered by the applicable Labor Agreement and in conjunction therewith is hereby required to produce all requested payroll books and records for inspection, including but not limited to the following documents:

- (1) All certified payroll records from December 1, 2015, to present;
- (2) Time cards for all employees from December 1, 2015, to present;
- (3) Monthly quick books summaries from October 2016, to present;
- (4) Quarterly payroll tax reports from October 1, 2016, to present;
- (5) Copies of monthly remittance reports from October 1, 2016, to present;
- (6) A list of all jobs in 2016 and 2017, along with the prime contractor for each project; and

(7) Copies of monthly remittance reports filed with Wyoming Local 847.

The Court shall retain jurisdiction to enter judgment for any additional fringe benefit contributions, liquidated damages, interest and audit fees that may be determined to be due as a result of the audit. Upon completion of the audit, Plaintiffs may file a Motion seeking entry of final judgment for any additional amounts that may be due and owing as determined by the audit, including any pre and post-judgment interest and Plaintiffs' claimed attorney fees and costs incurred.

**IT IS FURTHER ORDERED** that named Plaintiff and trustee Michael McDonald shall be removed as a named party plaintiff.

DATED this 19th day of February, 2019.



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Brian Morris  
United States District Court Judge